

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 05, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

NICOLAS VALENZUELA, as the
Personal Representative of the Estate
of FAVIOLA VALENZUELA;
SIMON VALENZUELA, individually;
and RAFAEL VALENZUELA,
individually,

Plaintiffs,

v.

FRANKLIN COUNTY, a municipal
corporation; R&B FLECK
ENTERPRISES LLC, a Washington
limited liability company; WESTERN
MEDICAL RESOURCES, LLC, a
Washington limited liability company;
RONALD W. FLECK AND JANE
DOE FLECK, a marital community;
LINDY NOETHE, in her individual
capacity; and JIM RAYMOND, in his
official capacity,

Defendants.

No. 4:24-CV-05029-MKD

STIPULATED PROTECTIVE
ORDER

ECF No. 28

Before the Court is the parties' request for Stipulated Protective Order, ECF

No. 28. The Court finds good cause under Fed. R. Civ. P. 26(c) to issue the

1 Stipulated Protective Order to prevent certain categories of information produced
2 by a party in discovery in this matter to prevent annoyance, embarrassment,
3 oppression, or undue burden or expense.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. The parties' request for Stipulated Protective Order, **ECF No. 28**, is
6 **GRANTED.**

7 **PROTECTIVE ORDER**

8 1. PURPOSES AND LIMITATIONS

9 Discovery in this action is likely to involve production of confidential,
10 proprietary, or private information for which special protection may be warranted.

11 Accordingly, the parties hereby stipulate to and petition the court to enter the
12 following Stipulated Protective Order. The parties acknowledge that this
13 agreement is consistent with LCR 26(c).¹ It does not confer blanket protection on
14 all disclosures or responses to discovery, the protection it affords from public
15 disclosure and use extends only to the limited information or items that are entitled
16 to confidential treatment under the applicable legal principles, and it does not

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¹ The Eastern District of Washington does not have a Local Civil Rule 26(c). The
19 Court presumes the parties are referencing the Western District of Washington's
20 Local Civil Rule 26(c).

1 presumptively entitle parties to file confidential information under seal.

2 2. “CONFIDENTIAL” MATERIAL

3 “Confidential” material shall include the following documents and tangible
4 things produced or otherwise exchanged:

- 5 a. Medical and health care records related to Faviola Valenzuela or any
6 other inmate at Franklin County Jail to the extent that information is
7 responsive to and produced through the discovery process and not
8 otherwise publicly available;
- 9 b. Personal or confidential information contained in personnel files of
10 current or former employees of Franklin County that would not otherwise
11 be publicly available; and
- 12 c. Franklin County Jail policies, procedures, practices, or other information,
13 including jail video, not otherwise available to the public when
14 maintaining confidentiality of those materials is necessary to protect the
15 safety of Franklin County employees, inmates, or the public, or to ensure
16 effective jail management and operations.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential
19 material (as defined above), but also (1) any information copied or extracted from
20 confidential material; (2) all copies, excerpts, summaries, or compilations of

1 confidential material; and (3) any testimony, conversations, or presentations by
2 parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover
4 information that is in the public domain or becomes part of the public domain
5 through trial or otherwise.

6 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

7 4.1 Basic Principles. A receiving party may use confidential material that
8 is disclosed or produced by another party or by a non-party in connection with this
9 case only for prosecuting, defending, or attempting to settle this litigation.

10 Confidential material may be disclosed only to the categories of persons and under
11 the conditions described in this agreement. Confidential material must be stored
12 and maintained by a receiving party at a location and in a secure manner that
13 ensures that access is limited to the persons authorized under this agreement.

14 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the designating party, a
16 receiving party may disclose any confidential material only to:

17 a. the receiving party’s counsel of record in this action, as well as
18 employees of counsel to whom it is reasonably necessary to disclose the
19 information for this litigation;

20 b. the parties, and the officers, directors, and employees (including in house

- 1 counsel) of the receiving party to whom disclosure is reasonably
2 necessary for this litigation, unless the parties agree that a particular
3 document or material produced is for Attorney's Eyes Only and is so
4 designated;
- 5 c. experts and consultants to whom disclosure is reasonably necessary for
6 this litigation and who have signed the "Acknowledgment and
7 Agreement to Be Bound" (Exhibit A);
- 8 d. the court, court personnel, and court reporters and their staff;
- 9 e. copy or imaging services retained by counsel to assist in the duplication
10 of confidential material, provided that counsel for the party retaining the
11 copy or imaging service instructs the service not to disclose any
12 confidential material to third parties and to immediately return all
13 originals and copies of any confidential material;
- 14 f. during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary and who have signed the "Acknowledgment and
16 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
17 designating party or ordered by the court. Pages of transcribed
18 deposition testimony or exhibits to depositions that reveal confidential
19 material must be separately bound by the court reporter and may not be
20 disclosed to anyone except as permitted under this agreement;

1 g. the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the
3 information.

4 4.3 Filing Confidential Material. Before filing confidential material or
5 discussing or referencing such material in court filings, the filing party shall confer
6 with the designating party to determine whether the designating party will remove
7 the confidential designation, whether the document can be redacted, or whether a
8 motion to seal or stipulation and proposed order is warranted. During the meet and
9 confer process, the designating party must identify the basis for sealing the specific
10 confidential information at issue, and the filing party shall include this basis in its
11 motion to seal, along with any objection to sealing the information at issue.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.
14 Each party or non-party that designates information or items for protection under
15 this agreement must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The designating party must designate for
17 protection only those parts of material, documents, items, or oral or written
18 communications that qualify, so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited.

2 Designations that are shown to be clearly unjustified or that have been made for an
3 improper purpose (e.g., to unnecessarily encumber or delay the case development
4 process or to impose unnecessary expenses and burdens on other parties) expose
5 the designating party to sanctions.

6 If it comes to a designating party's attention that information or items that it
7 designated for protection do not qualify for protection, the designating party must
8 promptly notify all other parties that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this agreement, or as otherwise stipulated or ordered, disclosure or discovery
11 material that qualifies for protection under this agreement must be clearly so
12 designated before or when the material is disclosed or produced.

13 a. Information in documentary form: (e.g., paper or electronic documents
14 and deposition exhibits, but excluding transcripts of depositions or other
15 pretrial or trial proceedings), the designating party must affix the word
16 "CONFIDENTIAL" to each page that contains confidential material. If
17 only a portion or portions of the material on a page qualifies for
18 protection, the producing party also must clearly identify the protected
19 portion(s) (e.g., by making appropriate markings in the margins).

20 b. Testimony given in deposition or in other pretrial proceedings: the parties

1 and any participating non-parties must identify on the record, during the
2 deposition or other pretrial proceeding, all protected testimony, without
3 prejudice to their right to so designate other testimony after reviewing the
4 transcript. Any party or non-party may, within fifteen days after
5 receiving the transcript of the deposition or other pretrial proceeding,
6 designate portions of the transcript, or exhibits thereto, as confidential. If
7 a party or non-party desires to protect confidential information at trial,
8 the issue should be addressed during the pre-trial conference.

- 9 c. Other tangible items: the producing party must affix in a prominent place
10 on the exterior of the container or containers in which the information or
11 item is stored the word "CONFIDENTIAL." If only a portion or portions
12 of the information or item warrant protection, the producing party, to the
13 extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the designating party's right to secure protection under this agreement for such
17 material. Upon timely correction of a designation, the receiving party must make
18 reasonable efforts to ensure that the material is treated in accordance with the
19 provisions of this agreement.
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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any party or non-party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a
4 designating party's confidentiality designation is necessary to avoid foreseeable,
5 substantial unfairness, unnecessary economic burdens, or a significant disruption
6 or delay of the litigation, a party does not waive its right to challenge a
7 confidentiality designation by electing not to mount a challenge promptly after the
8 original designation is disclosed.

9 6.2 Meet and Confer. The parties must make every attempt to resolve any
10 dispute regarding confidential designations without court involvement. Any
11 motion regarding confidential designations or for a protective order must include a
12 certification, in the motion or in a declaration or affidavit, that the movant has
13 engaged in a good faith meet and confer conference with other affected parties in
14 an effort to resolve the dispute without court action. The certification must list the
15 date, manner, and participants to the conference. A good faith effort to confer
16 requires a face-to-face meeting or a telephone conference.

17 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
18 court intervention, the designating party may file and serve a motion to retain
19 confidentiality. The burden of persuasion in any such motion shall be on the
20 designating party. Frivolous challenges, and those made for an improper purpose

(e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- a. promptly notify the designating party in writing and include a copy of the subpoena or court order;
- b. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and
- c. cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve

1 all unauthorized copies of the protected material, (c) inform the person or persons
2 to whom unauthorized disclosures were made of all the terms of this agreement,
3 and (d) request that such person or persons execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a producing party gives notice to receiving parties that certain
8 inadvertently produced material is subject to a claim of privilege or other
9 protection, the obligations of the receiving parties are those set forth in Federal
10 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
11 whatever procedure may be established in an e-discovery order or agreement that
12 provides for production without prior privilege review. The parties agree to the
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON-TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals,
16 each receiving party must return all confidential material to the producing party,
17 including all copies, extracts and summaries thereof. Alternatively, the parties
18 may agree upon appropriate methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival
20 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
correspondence, deposition and trial exhibits, expert reports, attorney work

1 product, and consultant and expert work product, even if such materials contain
2 confidential material. And counsel for each party may retain a copy of confidential
3 material obtained through litigation for the sole purpose of abiding by its
4 malpractice insurance policies to the extent they require the retention of case files
5 for a specified time.

6 The confidentiality obligations imposed by this agreement shall remain in
7 effect until a designating party agrees otherwise in writing or a court orders
8 otherwise.

9 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
10 production of any documents, electronically stored information (ESI) or
11 information, whether inadvertent or otherwise, in this proceeding shall not, for the
12 purposes of this proceeding or any other federal or state proceeding, constitute a
13 waiver by the producing party of any privilege applicable to those documents,
14 including the attorney-client privilege, attorney work-product protection, or any
15 other privilege or protection recognized by law. This Order shall be interpreted to
16 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions
17 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
18 shall serve to limit a party's right to conduct a review of documents, ESI or
19 information (including metadata) for relevance, responsiveness and/or segregation
20 of privileged and/or protected information before production. Information

1 produced in discovery that is protected as privileged or work product shall be
2 immediately returned to the producing party.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order and provide copies to the parties.

5 DATED August 5, 2024.

6 s/Mary K. Dimke
7 MARY K. DIMKE
8 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Eastern District of Washington on _____ [date] in the case of Valenzuela
v. Franklin County, et al., Case number 4:24-cv-05029-JAG. I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the terms

1 of this Stipulated Protective Order, even if such enforcement proceedings occur
2 after termination of this action.

3 Date: _____

4 City and State where sworn and signed: _____

5 Printed name: _____

6 Signature: _____